

CROTTY, J

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KLAUBER BROTHERS, INC.,

Plaintiff

Civil Action No.: 07 CV 6133 (PAC)  
ECF Case

v.

DREAMWEAR, INC.

Defendant.

**FINAL JUDGMENT INCLUDING  
PERMANENT INJUNCTION  
UPON CONSENT AND  
DISMISSAL WITH  
PREJUDICE OF COUNTERCLAIM**

Plaintiff Klauber Brothers, Inc. ("Klauber" or "Plaintiff") having filed its Complaint against Dreamwear, Inc. ("Dreamwear" or "Defendant") charging Defendant with copyright infringement and Defendant having asserted affirmative defenses and counterclaimed for invalidity of Plaintiff's copyright in suit and the parties desiring to settle the controversy between them with respect thereto, without Defendant admitting

any intentional wrongdoing and without Plaintiff admitting that the copyright in suit is invalid:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, between Klauber and Dreamwear that:

1. This Court has jurisdiction over the parties to this action and has jurisdiction over the subject matter hereof pursuant to U.S.C. § 1391 since the Complaint and Counterclaim arise under the U.S. Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.* Jurisdiction is vested in this Court under 28 U.S.C. §§ 1331 and 1338(a) with respect to this action.

2. Klauber warrants and represents that it is the owner of U.S. Copyright Registration No. VA 196 346 and of Supplementary Registration Certificate No. VA 1-391-182 with respect to Klauber's design No. 565 and that such copyright and such certificates are valid and subsisting.

3. Dreamwear does not necessarily agree with Klauber's representations in the immediately preceding paragraph, and discovery in the Civil Action had not concluded, but Dreamwear has no evidence to the contrary relative thereto.

4. Dreamwear represents that, when it ordered the garments which are the subject of this action, it had no knowledge of the existence of U.S. Copyright Registration Certificate No. VA 196 346 or that Klauber claimed any rights in the fabric pattern that is the subject of such copyright and further contends that, upon receiving notice thereof on behalf of Klauber, it promptly ceased selling any garments bearing the fabric pattern which Klauber claims was an infringement of such copyright.

5. Klauber does not necessarily agree with Dreamwear's representations in the immediately preceding paragraph, but has no evidence to the contrary relative thereto.

6. Except as provided in paragraph 7 below, and effective immediately, Dreamwear is permanently enjoined from infringing in any way the copyright of Klauber in copyright registration certificate No. VA 196 346 and is specifically enjoined from importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising fabric or garments including or incorporating copies of the fabric design represented by such copyright registration or fabric or garments including or incorporating fabric with a design substantially similar thereto or by causing and/or participating in such importing,

reproducing, displaying, knitting, manufacturing, weaving, printing, re-printing, publishing, vending, distributing, selling, promoting or advertising by others.

7. It shall not be considered a violation of the permanent injunction of the immediately preceding paragraph for Dreamwear to distribute, before October 31, 2008, its remaining stock on hand of garments which it designates by its style Nos. DB1117 or DB1118 comprising no more than 6,230 units of its set style No. DB1117 and no more than 13,730 units of its style No. DB1118, Dreamwear may use the Style Nos. DB1117 and DB1118, provided the items sold and all related advertising and promotional material does not include lace trim substantially similar to the Klauber Lace Pattern.

8. By virtue of Dreamwear's consenting to this Final Judgment including permanent injunction, Dreamwear shall not be deemed to admit any intentional wrongdoing, having consented hereto in the interest of avoiding the expense of continuation of the litigation.

9. Dreamwear's Counterclaim in this action is dismissed with prejudice.

10. The parties hereto having entered into a separate Settlement Agreement, this Final Judgment Including Permanent Injunction is to be entered without taxation of costs, damages or attorneys' fees.

11. This Judgment shall not be cited as an adjudication of contested issues except between the parties hereto.

12. This Court retains jurisdiction to enforce the terms of this injunction and of the Settlement Agreement entered into between the parties hereto. Upon entry of this Order the action is otherwise dismissed.

SO ORDERED

  
\_\_\_\_\_  
USDJ

*New York, New York*  
Dated: December 7, 2007, 2007

Judgment entered:

Clerk, USDC SDNY

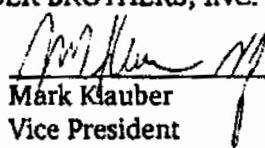
Dated: New York, New York  
\_\_\_\_\_, 2007

**CONSENTS**

The undersigned hereby consented to the entry of the annexed Final Judgment  
Including Permanent Injunction And Dismissal Of Counterclaim.

KLAUBER BROTHERS, INC.

By:

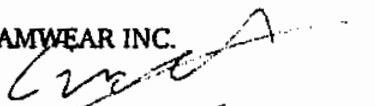
  
Mark Klauber  
Vice President

Dated: New York, New York

11/29, 2007

DREAMWEAR INC.

By:

  
Elliott Franco  
President

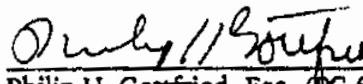
Dated: New York, New York

12/15, 2007

Approved as to form:

AMSTER, ROTHSTEIN & EBENSTEIN, LLP  
Attorneys for Klauber Brothers, Inc.  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000

By:

  
Philip H. Gottfried, Esq. (PG 6278)

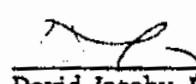
Dated: New York, New York

December 6, 2007

Approved as to form:

SCHIFF HARDIN LLP  
Attorneys for Dreamwear, Inc.  
900 Third Avenue, 3<sup>rd</sup> Floor  
New York, New York 10022  
(212) 753-5000

By:

  
David Jacoby, Esq. (DJ 3440)

Dated: New York, New York

December 4, 2007